IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.766 OF 2003
IN
SUMMARY SUIT NO.2019 OF 2003

B.Vaman Prabhu Plaintiff

versus

Mahabala S. Shetty Defendants

Ketan R. Parekh for plaintiff.

Prashant A. Pashte for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th June 2005

PC :

1. It is the case of the plaintiff that he advanced from June 1999 to October 2000 some amounts to the defendant. The defendant has in consideration of the same, issued two demand Bills of Exchange repayable on the dates specified therein. It is contended that the defendants issued two separate receipts along with Bills of Exchange. It is further contended that the defendants up to August 2001 and September 2001 paid interest to the plaintiff.

2. It is then contended that on or about August 2002 plaintiff requested the defendants to refund and return the amounts due to him together with interest due till that date.

3. The defendants issued two cheques of Rs.80,000/- and Rs.1,40,000/- on 28th August 2002 being principal amounts under two Bills of Exchange with a direction to deposit them as and when the defendants issue instructions to the plaintiff. The case of the plaintiff is that no intimation to deposit the cheques were issued. The plaintiffs approached the defendants and requested him to pay the amount after giving such assurances and cheques, as aforesaid. However, the amount was not paid. Thereupon, legal notices were sent but there has been no compliance with the requisitions contained therein despite their due receipt.

4. In these circumstances, present suit is filed as a summary suit to recover the amounts under two Bills of Exchange with interest at the statutory rate i.e. @ 18% p.a..

5. An affidavit in reply has been filed by the defendants in which he raises three contentions.

His first contention is that the Bills of Exchange were drawn at Dombivali and paid at Dombivali. It is contended that the bank account from which the cheques are drawn is also at Dombivali. It is contended that no part of the cause of action has arisen within jurisdiction of this Court, and therefore, this Court has no jurisdiction to entertain and try present suit.

6. It is next contended that two cheques were handed over as a collateral security with a specific instruction to deposit them as and when instructed by the defendants. However, it is pointed out that the defendants paid Rs.1.40 lakh from 1st July 1999 to 2003. There is a further contention that the amounts under the Bills of Exchange have been duly paid, therefore, there is nothing due and payable. The third contention is that the defendants have not produced receipts based upon which he is claiming the amounts in addition to the Bills of Exchange. That apart, it is contended that the date of Exhibit-B is changed by the plaintiff with an intention to bring the claim within period of limitation. All these are triable issues, and therefore, according to the defendant, he is entitled to unconditional leave.

7. In the rejoinder affidavit it is pointed out that leave under Clause XII of the Letters Patent has been granted by this Court and no application is made to revoke the same. In the light of the same, there is no substance in the contention that this Court lacks territorial jurisdiction. Reliance is placed on the averments in the plaint and more particularly those pertaining to limitation. The second plea that amount has been paid, according to Mr.Parekh, is without any substance because no evidence is produced to show that the amounts under the Bills of Exchange/Cheques has been paid and there is nothing due and payable to the plaintiff. The third contention of non production of receipts and limitation, according to Mr.Parekh, is equally untenable inasmuch as the Bills of Exchange have been signed by the defendants. Secondly, the cheques for meeting the liability under the Bills of Exchange were duly handed over by the defendants. If there was any complaint insofar as non signing or executing the same, as also of interpolation therein, there was no question of handing over the cheques. For all these reasons, according to Mr.Parekh, defence as raised is frivolous and vexatious and only with a

view to delay the claim in the summary suit. Consequently, a decree must follow.

8. There is much substance in the contentions of Mr.Parekh. With the assistance of Mr.Parekh and Mr.Pashte I have perused the plaint and the annexures thereto. In the reply it has been categorically stated that the cheques have been handed over. It has been categorically admitted that the amount of interest has been paid. Further, it is also contended that Rs.1.40 lakh as well as Rs.80,000/- have been paid and there is thus nothing due and payable. Further, it is pertinent to note that nothing is produced even at this stage to prima facie dispute the averments in the plaint and to substantiate the plea of payment in full. This is a case where defence is raised only with a view to delay the claim in the suit. The jurisdictional issue also is raised only as an after thought inasmuch as the suit is filed on 25th June 2003. Leave under Clause XII of the Letters Patent has been granted on 27th March 2003. Although affidavit in reply is filed on 5th September 2003, no application is made to revoke this leave. Merely by stating that the amounts under the cheques were paid from a bank account at Dombivali and that the amount

under the Bills of Exchange was to be paid at Dombivali, this Court's jurisdiction cannot be ousted. Ultimately, this is a case of lack of territorial jurisdiction. The plaintiff has stated that the transaction in question was at Mumbai. The Bills of Exchange was handed over at Mumbai. Merely because they were payable at Dombavali, that aspect would not oust this Court's jurisdiction. Ultimately, the issue of territorial jurisdiction has to be dealt with in slightly different manner inasmuch as unlike absence of inherent jurisdiction or the subject matter not within the purview of this Court, Such an issue does not strike at the root of the jurisdiction of this Court. Therefore, in my view, there is no substance in the challenge to the territorial jurisdiction of this Court.

9. Equally, the two contentions about payment are unsubstantiated. Once the cheques were admittedly handed over in admission of liability, then it is not proper that the defendant is allowed to wriggle out of his promises to pay the amounts under the Bills of Exchange. It is pertinent to note that there is no objection raised to the maintainability of the suit as a summary suit, once it is based on two Bills of

Exchange.

10. In the light of the aforesaid, in my view, the plaintiff is entitled to succeed. He will be normally entitled to a decree as prayed. However, one of the principles which the Supreme Court applies while considering the application to defend, is to show mercy to the defendants and give them chance to prove even a plausible or probable defence. Considering that fact and applying liberal principles, in my view, interest of justice would be served if conditional leave is granted to the defendant to defend the suit on deposit of Rs.2.20 lakh (Rs.Two lakh twenty thousand only) in this Court within a period of 12 weeks from today. On such deposit being made, the suit shall stand transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection.

11. In default, further consequences in law will follow. On deposit the plaintiff is at liberty to apply for withdrawal of the amount and that application will be considered on it’s own merits and in accordance with law.

(S.C.DHARMADHIKARI, J.)